

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
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Xavier BLIN et al.)	Group Art Unit: 1618
)	
Application No.: 10/656,146)	Examiner: J. ROGERS
)	
Filed: September 8, 2003)	
)	
For: COSMETIC COMPOSITION)	Confirmation No.: 1368
COMPRISING A HYDROCARBON)	
OIL AND A SILICONE OIL)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION UNDER 37 C.F.R. § 1.132

I, Virginie PEREZ NOWAK, do hereby make the following declaration:

1. I am a citizen of France citizen.
2. I have a PhD degree in Physico-chemistry of polymers from Université Pierre et Marie Curie (Paris 6 – France) in 2003.
3. I have been employed by L'ORÉAL since 2005 and I am presently a research engineer.
4. During my employment at L'ORÉAL, I have been engaged in research and development regarding cosmetic products.
5. Given my education and experience, particularly in the area of physico-chemistry, I consider myself able to provide the following testimony based on experiments conducted by me or under my supervision.

COMPARATIVE EXPERIMENTS

A. PREPARATION OF THE COMPOSITIONS

6. Three lipstick compositions were prepared as described below.

7. Composition 1 is Example 4 from the specification, and was prepared according to the present claims. Comparative Compositions 2, and 3 were prepared according to Composition 1, with the exception that Comparative Compositions 2 and 3 were prepared with two different ester oils recited in U.S. Patent No. 5,961,998 to Arnaud et al. ("Arnaud"). The ingredients are set forth in Table 1 below, in amounts of grams.

Table 1

Phase	COMPOUNDS	Composition 1 Example 4 from specification (Inventive)	Composition 2 (Comparative)	Composition 3 (Comparative)
A	Di-isostearyl malate	30.00		
	Isopropyl myristate		30.00	
	Neopentyl glycol Diheptanoate			30.00
	Phenyltrimethyltrisil oxane 20cst (DC- 556 from Dow Corning)	18.00	18.00	18.00
	Phenyltrimethyltrisil oxane 1000cst (Belsil 1000 pdm from Wacker)	25.19	25.19	25.19
B	Microcrystalline	10.00	10.00	10.00

	Wax (Microwax HW from Paramelt)			
	Alkyl dimethicone C30-C45 (SF 1642 from Momentive performance materials)	2.50	2.50	2.50
	Mixture of tri-glycerides of lauric, myristic, palmitic and stearic acids (50/20/10/10) manufactured or sold as Softisan 100 by Sasol	10.00	10.00	10.00
C	Red 7	0.26	0.26	0.26
	Red 21	0.06	0.06	0.06
	Black iron oxyde	0.09	0.09	0.09
	Brown iron oxyde	2.10	2.10	2.10
	Mica and titanium dioxide	1.80	1.80	1.80
	TOTAL	100.00 g	100.00 g	100.00 g

8. The pigments of Phase C were ground in the oil of Phase A. The ground product was then mixed with Phase B and with the remaining compounds of Phase A. The mixture was heated in a jacketed pot for at least 30 minutes after the waxes had totally melted.

9. The resultant paste was cast in a mold appropriate for sticks, which was heated at 40-42°C and then held at -18°C for half an hour. The 12.7 mm sticks were then demolded.

B. MEASUREMENT OF HARDNESS

10. A sample of the composition was poured hot into a lipstick mold of 12.7 mm in diameter.
11. The mold was then cooled in the freezer for about one hour.
12. The stick of lipstick was then stored at 20°C.
13. The hardness of each sample was measured after standing for 24 hours.
14. The hardness of the samples, expressed in grams, was measured on a DFGS2 dynamometer, marketed by Indelco-Chatillon, using the so-called "butter-cutting wire" method.
15. The measured hardness corresponds to the maximal shear force exerted by a rigid tungsten wire of diameter 250 μm , advancing at a speed of 100 mm/min. The results are set forth in Table 2 below.

Table 2

	Composition 1 Example 4 from specification (Inventive)	Composition 2 (Comparative)	Composition 3 (Comparative)
HARDNESS	99g	33g	80g

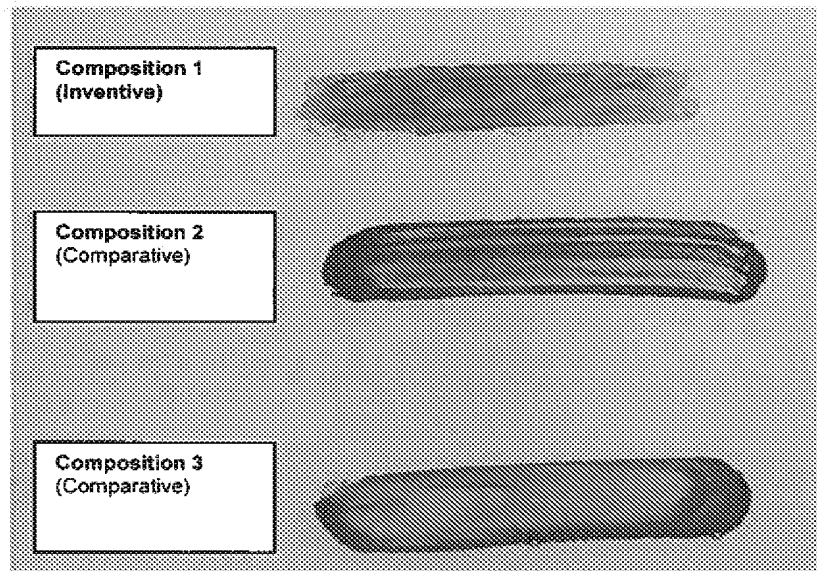
C. COSMETIC EVALUATION

16. The 3 lipsticks were evaluated as described in the present patent application by 3 qualified persons according to various criteria. The resultant evaluations are set forth in Table 3 below.

Table 3

	Composition 1 Example 4 from specification (Inventive)	Composition 2 (Comparative)	Composition 3 (Comparative)
Stability of the sticks after 24 hours at 34°C, 36°C and 38°C.	34°C : very good 36°C : good 38°C : good	34°C: the stick is collapsing 36°C: the stick is collapsing 38°C : the stick is collapsing	34°C : very good 36°C : good 38°C : quite good
Deposit on a Bioskin support	homogeneous	not homogeneous	not homogeneous
Cosmetic Evaluation of the deposits with each composition (each deposit was realized with 5 consecutive applications of a composition)	The texture was light and smooth. The deposit was homogenous, half covering and glossy. The deposit exhibited a good level of wear of the glossiness and a medium level of wear of color	The stick got crushed when applied and was sometimes broken. The deposit was not homogenous, was oily (greasy), very slippery and had an average gloss level. The deposit exhibited a poor level of wear of the glossiness and a poor level of wear of color	The deposit was not homogenous, was oily (greasy), very slippery and had an average gloss level. The deposit exhibited a poor level of wear of the glossiness and a poor level of wear of color

Photo 1



17. The sticks of Composition 2 were not stable, collapsing even at 32°C. The consistency of the composition was excessively soft and the sticks got crushed or broke when applied on the lips or on a bioskin support. The sticks of Compositions 1 and 3 were stable.

18. The deposit realized with the sticks of Composition 1 was homogenous and not oily (not greasy). On the contrary, the deposits realized with (comparative) Compositions 2 and 3 were heterogenous and greasy (oily).

19. The deposit realized with the sticks Composition 1 was glossy and exhibited a good level of wear of the glossiness and a medium level of wear of color.

On contrary, the deposits realized with the (comparative) Compositions 2 and 3 exhibited a poor level of wear of the glossiness and a poor level of wear of color.

CONCLUSION

20. The observed differences in hardness and cosmetic properties demonstrate unpredictability in the art based upon the differences in the above compositions.

21. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 12/01/2010

By: Virginie Pérez Nowak

